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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/678,202	09/29/2000	David Bar-Or	4172-3	3734
22442	7590	09/28/2005	EXAMINER	
SHERIDAN ROSS PC 1560 BROADWAY SUITE 1200 DENVER, CO 80202			LUKTON, DAVID	
			ART UNIT	PAPER NUMBER
			1654	

DATE MAILED: 09/28/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

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SERIAL NUMBER	FILING DATE	FIRST NAMED APPLICANT	ATTORNEY DOCKET NO.
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09/678202

EXAMINER
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ART UNIT	PAPER NUMBER
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2005/0901

DATE MAILED:

Please find below a communication from the EXAMINER in charge of this application.

Commissioner of Patents

Please see the attached communication regarding applicants letter filed 7/14/05.

Pursuant to the directives of the response filed 7/14/05, claims 1-26, 28-31 and 375-381 have been cancelled, and claims 382-402 added. Claims 382-402 are now pending.

Applicants' amendment, however, is held "non-responsive". Pursuant to the restriction mailed 5/2/03, applicants elected Group 34 (response filed 6/2/03), which at the time consisted of claims 1-31, drawn to a method of reducing the damage done by "ROS" in an animal (genus of peptides limited to G2). Also elected were various species, i.e., the following:

the elected invention was one in which the "damage" caused by the ROS was to heart tissue specifically; the animal subject was in need of open-heart surgery; and the animal was suffering from ischemia.

Now, the claims require that the damage done by the ROS be that associated with a neurodegenerative disease. This does not encompass the elected species. It may be true that an ischemic event can cause, over a period of time, a specific neurodegenerative disorder. But an animal in which a brief (e.g., 15 minutes) period of hypoxia has been induced is not suffering from a neurodegenerative disease. A human who has suffered hypoxia due to e.g., venous occlusion may suffer a

neurodegenerative disease over the course of several months or years, but the brief event of venous occlusion is not, in and of itself, a neurodegenerative disease.

Furthermore, as indicated above, the elected species (response filed 6/2/03) required that the ROS cause damage to heart tissue. Now the claims are limited to damage that occurs during, or as a result of, neurodegenerative disease. Neurodegenerative diseases encompass the following:

AIDS Dementia Complex (a.k.a. HIV-Associated Dementia) Amyotrophic Lateral Sclerosis (a.k.a. Lou Gehrig's Disease), Alzheimer's Disease, Huntington's Disease, Multiple Sclerosis, Parkinson's Disease, Creutzfeldt-Jakob disease, progressive supranuclear palsy, Creutzfeldt-Jakob disease, multifocal leukoencephalopathy, diffuse and transitional Lewy body disease, frontotemporal degeneration, corticobasal degeneration, Pick Disease, argyrophilic grain disease and corticobasal degeneration.

In which of these, exactly, is damage to heart tissue (by ROS) the salient feature?

Which of these diseases can be treated by undertaking open heart surgery, and which of these is equivalent to ischemia?

It is clear that applicants are attempting to disregard their previous species elections. Changing the invention so as to circumvent the previously elected species is not a matter of right. [However, in the event that applicants were to file an "RCE", no objection would be raised by the examiner if applicants wanted to elect new species].

**Amendment of the claims is required so as to encompass the previously elected**

species.

✦

Since the above-mentioned reply appears to be *bona fide*, applicant is given **ONE (1) MONTH or THIRTY (30) DAYS** from the mailing date of this notice, whichever is longer, within which to supply the omission or correction in order to avoid abandonment. **EXTENSIONS OF THIS TIME PERIOD MAY BE GRANTED UNDER 37 CFR 1.136(a).**

✦

Any inquiry concerning this communication or earlier communications from the examiner should be directed to David Lukton whose telephone number is 571-272-0952. The examiner can normally be reached Monday-Friday from 9:30 to 6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Bruce Campell, can be reached at (571)272-0974. The fax number for the organization where this application or proceeding is assigned is 571-273-8300.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 571-272-1600.



DAVID LUKTON  
PATENT EXAMINER  
GROUP 1800